

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

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THE DEPOSITION OF ROBERT

SCHWABE, II, produced as a witness on behalf of
the Plaintiff in the above styled and numbered
cause, taken on the 12th day of June, 2007, in the
City of West Siloam Springs, County of Delaware,
State of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Richard Garren
Attorney at Law
502 West 6th Street
Tulsa, OK 74119

FOR TYSON FOODS:

Ms. Erin Thompson
Attorney at Law
The Three Sisters Bldg.
214 West Dickson Street
Fayetteville, AR 72701

FOR CARGILL:

Ms. Theresa Noble Hill
Attorney at Law
100 West 5th Street
Suite 400
Tulsa, OK 74103
-and-
Ms. Dara Mann
Attorney at Law
Atlanta, GA

FOR SIMMONS FOODS:

Mr. Joshua Wisley
Attorney at Law
211 East Dickson Street
Fayetteville, AR 72701

FOR PETERSON FARMS:

Mr. Philip D. Hixon
Attorney at Law
320 South Boston
Suite 700
Tulsa, OK 74103

FOR POULTRY PARTNERS:

Mr. D. Kenyon Williams
Attorney at Law
320 South Boston
Suite 400
Tulsa, OK 74103

1 FOR GEORGE'S:

Mr. Paul Thompson
Attorney at Law
221 North College
Fayetteville, AR 72701

4 ALSO PRESENT:

Ms. Elizabeth Bullock
Ms. Candace Smith

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1 (Whereupon, the deposition began at

2 10:01 a.m.)

3 ROBERT SCHWABE, II,

4 having first been duly sworn to testify the truth,

5 the whole truth and nothing but the truth, testified

6 as follows:

7 DIRECT EXAMINATION

8 BY MR. GARREN:

9 Q Mr. Schwabe, please state your full name to
10 the court.

10:01AM

11 A Robert Vernon Schwabe, II.

12 Q And what is your residence address?

13 A 4053 Highway 10, Kansas, Oklahoma 74347.

14 Q Is that also the address for your poultry
15 operation?

10:02AM

16 A Yes.

17 Q Does anyone else live there with you at the
18 residence?

19 A My wife.

20 Q Is that all?

10:02AM

21 A In the house, in that house?

22 Q Yeah, in your residence.

23 A In the residence, that's all.

24 Q Have you ever had a deposition taken before?

25 A Yes.

10:02AM

1 A Yes.

2 Q What licenses do you hold besides being a
3 grower; are you an applicator?

4 A Yes, private applicator.

5 Q Have you ever been commercial? 10:17AM

6 A No.

7 Q How long have you been licensed as a private
8 applicator?

9 A Ever since I had to be. I mean I don't
10 exactly remember what year the law came out and said 10:17AM
11 I had to.

12 Q Approximately 1998 then?

13 A Probably. The year I had to I got licensed.

14 Q And have you been continuously licensed as a
15 private applicator? 10:17AM

16 A Yes.

17 Q In this deposition when I refer to your
18 operation, my intention is to refer to your poultry
19 operation unless I otherwise say. Okay?

20 A Okay. 10:17AM

21 Q With regard to your poultry operation, who has
22 the day-to-day control of its operation?

23 A I do.

24 Q Does anyone assist you in that operation?

25 A There is. 10:18AM

1 Q All right. So you don't have an opportunity
2 to choose a kind of bird or the flock that you would
3 want to grow; is that a fair statement?

4 A What are you saying, the kind of bird? Are
5 you saying hen?

11:08AM

6 Q The quality of the hen?

7 A Are you saying hen or tom or breed or what?

8 Q Whether it's a hen or a tom, whether it's the
9 breed, do you have a choice of the quality of the
10 birds that are brought into your place for growing?

11:09AM

11 A No.

12 Q Is it your choice to grow big hens and big
13 toms or is that something that Cargill has decided
14 is best?

15 MR. HIXON: Object to form.

11:09AM

16 A In the past it's been negotiated.

17 Q And has it been recently since '92?

18 A Yes.

19 Q So is it your preference to grow these birds
20 as opposed to a different bird?

11:09AM

21 A Yes.

22 Q Let's look at Page 3295 of this contract.

23 I'll refer you to Paragraph 4 and I'll ask you to

24 read that paragraph into the Record out loud,

25 please.

11:09AM

1 chlorinator and it had been giving me a lot of
2 trouble and a lot of time consumed to mix up
3 chlorine every day for this. So this gas
4 chlorinator operates itself and you won't have to
5 mess with it, so it's more convenient on my behalf
6 to do that.

11:26AM

7 Q Who paid for that additional investment to add
8 the chlorinator?

9 A I did.

10 MS. HILL: Let him finish.

11:27AM

11 Q And did you pay for it yourself up front or
12 did Cargill advance the money and you paid them back
13 over time?

14 A They advanced the money and I paid them back
15 over time.

11:27AM

16 Q Did you do that in the form of a promissory
17 note or did they take money out of your settlement
18 checks?

19 A Money out of the settlement check.

20 Q Did you have a written agreement with them
21 about paying them back?

11:27AM

22 A Verbal.

23 Q Now, other than the chlorinator, has there
24 been any other -- prior to that time, what was the
25 next investment in either equipment or facilities

11:27AM

1 that --

2 A I computerized my brood house.

3 Q And what was the -- were you requested,
4 suggested or asked to do so by Cargill?

5 MS. HILL: Object to form. 11:27AM

6 A I decided to do it on my own because it would
7 be more efficient and less time consuming on my
8 behalf.

9 Q Are you telling me that nobody from Cargill
10 either suggested or gave you the idea that it would 11:27AM
11 be better for you to do so?

12 A They had a meeting that I went to and
13 explained it but it wasn't -- I mean it wasn't a
14 demand I do it. They wouldn't cut me off the
15 contract if I didn't do it. It was my own decision 11:28AM
16 to do it.

17 Q Those are not words I'm using. I'm just
18 asking whether they suggested the idea to you to
19 employ that --

20 A I guess -- 11:28AM

21 MR. WILLIAMS: Let him finish the question
22 to make sure what he's asking.

23 Q Did they suggest it to you as a result of that
24 meeting?

25 A Yes. 11:28AM

1 Q Did the field man that prepared this form
2 inquire of you at the same time what you do with the
3 used litter and excrement that's removed from your
4 barns?

5 MR. HIXON: Same objection. 12:07PM

6 A I don't remember; I don't remember.

7 Q Okay. So this talks about in the third
8 grouping litter disposal. It's got litter storage;
9 do you see that?

10 A Yes. 12:07PM

11 Q And it's got NMP. Does that stand for
12 nutrient management plan?

13 A Yes.

14 Q Proper litter storage building use?

15 A Correct. 12:07PM

16 Q And it has an other and nothing is written
17 there?

18 A Right.

19 Q They don't ask what happens to your poultry
20 waste -- 12:07PM

21 MS. HILL: Object to form.

22 Q -- when you take it out of the barn on
23 cake-outs?

24 MS. HILL: Object to form.

25 A It's left up to me what I do with it. 12:08PM

1 Mr. Rick Bailey?

2 A Hay.

3 Q So he would provide you hay and you would
4 provide him poultry waste that's listed here as the
5 tonnage on this report?

01:37PM

6 A Right.

7 MS. HILL: Object to form.

8 Q Would he come over and pick it up or would you
9 deliver it to him?

10 A I've done it various ways.

01:37PM

11 Q Has he come to pick it up?

12 A Yes.

13 Q Do you have a spreader truck?

14 A Yes.

15 Q Does he have a spreader truck or does he use
16 yours?

01:37PM

17 A I don't know. He came and picked it up in a
18 dump truck.

19 Q You don't know how he applied it?

20 A I do not.

01:37PM

21 Q When you deliver it to him, do you use your
22 spreader truck?

23 A I do.

24 Q And do you then spread it on his fields for
25 him at the same time?

01:37PM

1 brooder house right before we took it over to the
2 grow-out.

3 Q Is that generally then all you would have
4 done?

5 A That's the only thing we would have added. 03:01PM

6 Q Do you do that on a regular basis or just --

7 A Periodically.

8 Q Do you apply any organic or inorganic
9 materials or additives to any of your fields where
10 you spread poultry waste? 03:01PM

11 MR. WILLIAMS: Object to the form.

12 A I'm not clear what you're asking.

13 Q Let me ask you this: Do you use any
14 commercial fertilizers on any of your land shown in
15 Exhibit 3? 03:01PM

16 A Have I ever?

17 Q In the last 15 years. Let's start there.

18 A Not since I've been in the turkey business.

19 Q You've relied solely on the poultry waste
20 generated from your barns as your fertilizer for
21 your property? 03:01PM

22 A Right.

23 Q If you've got a high phosphorus level that
24 says none is needed but you need nitrogen, do you
25 apply nitrogen solely or do you simply apply poultry 03:02PM